

**REMARKS**

Reconsideration and withdrawal of the requirement for restriction is respectfully requested in view of the amendment and remarks herein. It is noted that claims 1-22 are cancelled and new claims 23-34 are added.

The Examiner, as disclosed in the December 14, 2001 Office Action, has required an election under 35 U.S.C. §121, to the subject matter of one of the following groups:

**Group I**, claims 1-7 and 11-12, drawn to transgenic *Brassica* plants, seeds, or parts thereof, the genomes of which are capable of producing diagnostic restriction fragment length polymorphisms with Southern blot assays with plant genomic DNA and probes consisting of SEQ ID NO: 1, 2 or 3; and/or transgenic *Brassica* plants, seeds; or parts thereof, the genomes of which are capable of producing diagnostic DNA fragments produced by PCR amplification with plant genomic DNA and synthetic primers having the nucleotide sequence of SEQ ID NO: 11 or 12 classified for example in class 800, subclass 278.

**Group II**, claims 8-10, 13-16, and 19-22, drawn to a male-sterile transgenic *Brassica* plant, seed, or parts thereof characterized with molecular markers, progeny of said plant, and a method of identifying said plant with molecular markers, classified for example in class 800, subclass 303.

**Group III**, claims 17-18, drawn to kits comprising at least two PCR-derived probes, classified for example in class 536, subclass 24.3.

It is respectfully submitted that Group III, claims 17-18, is elected, with traverse, for further prosecution in this application. Claims 17 and 18 have been cancelled by this amendment and new claims 23-34 have been added to clarify the claims and show that there is indeed unity

of the invention and that there exists no undue or serious burden in searching and examining all of the claims of this application. Further, the entire application relates to plants which comprise elite event MS-B2; the newly added claims more adequately describe this aspect of the invention.

As a traverse, it is noted that the MPEP lists two criteria for a proper restriction requirement. Firstly, the inventions must be independent or distinct (MPEP § 803). Secondly, searching the additional inventions must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ...even though it includes claims to distinct or independent inventions.” *Id.*

All of the claims of the application relate to plants that comprise elite event MS-B2, forming a single inventive concept of this elite event. Methods for identifying plants comprising the MS-B2 elite event and the kits for identifying those plants are based on the same molecular characteristics of the plants, i.e. the flanking regions of the MS-B2 elite event in the plants, and are one invention. It is respectfully submitted that any search for methods for identifying plants comprising the MS-B2 elite event will certainly encompass kits for said identification.

It is maintained that the claims of at least Groups II and III are related to a single inventive concept, i.e., there is clearly unity of invention between Groups II and III, and there is no undue or serious burden in searching and examining all of the pending claims in this application.

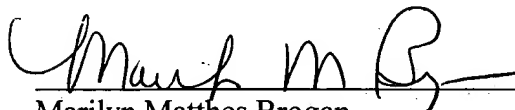
In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the restriction requirement of the Office Action dated December 14, 2001. Accordingly, early

and favorable examination on the merits of all of the claimed subject matter is respectfully requested.

Respectfully submitted,

Attorneys for Applicants  
FROMMER LAWRENCE & HAUG LLP

By:



Marilyn Matthes Brogan

Reg. No. 33,223

Tel. (212) 588-0800

Fax (212) 588-0500